



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 30, 1996

Ms. Tamara Armstrong
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR96-0635

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 33134.

Travis County (the "county") has received a request for the district attorney's files in a specific closed case. You have submitted the requested information to us for review (Exhibits A, B, C, and D) and you claim that sections 552.101 and 552.111 of the Government Code except it from required public disclosure.

You claim that section 552.101 excepts criminal history records, which you have submitted as Exhibit A, from required public disclosure. The criminal history information appears to have been generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC"). Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history information which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to criminal history information it generates. *Id.* Section 411.083 of the Government Code deems confidential criminal history records that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice

agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency, such as the county, to obtain criminal history record information; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Thus, any criminal history record information generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. See Open Records Decision No. 565 (1990). Furthermore, any criminal history record information obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.

You also argue that section 552.101 in conjunction with common-law privacy excepts some of the requested information in Exhibit B from required public disclosure. For information to be protected by common-law privacy it must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685.

We have examined the information which you argue is protected under common-law privacy. We believe that there is a legitimate public interest in the information as it relates to the allegations of theft. Therefore, you may not withhold the information under common-law privacy.

You also ask whether release of some information in Exhibit C by the county might subject the county to liability for libel. You state that "[e]xhibit C contains information, the release of which would not be libelous in this case, although the release of such information to other persons may possibly be libelous." You are concerned that because section 552.007 of the Government Code prohibits selective disclosure, once you release this information to the requestor, you will be required to release it to any other requestor in the future. You also contend that because the statements are opinions rather than facts, that "the information in question is not libelous." Because you state that you believe that release of the information to the requestor in this case would not be libelous, it is not necessary for this office to address your arguments regarding further release of the information. If the county receives a request for the same information in the future, we suggest that you request a ruling from this office at time.

You contend that section 552.111 in conjunction with the attorney work-product doctrine excepts all of the requested information from disclosure. In the past this office has concluded that in the context of the Open Records Act, the work-product doctrine applies only upon a showing that section 552.103(a) applies. See Open Records Decision

No. 575 (1990). However, the issues you raise with respect to attorney work product are the subject of pending litigation which is now on appeal to the Texas Supreme Court. *See Holmes v. Morales*, 906 S.W.2d 570 (Tex. App.--Austin 1995, writ granted). In light of the pendency of this litigation, ruling on your claims regarding work product would be inappropriate for this office. At this point, the outcome of the *Holmes* case may resolve your claims and may moot any decision this office might reach on those claims. For these reasons, we decline to rule on the issues you raise regarding attorney work product, and you may withhold the requested information pending the outcome of the *Holmes* case.

We also remind you that even if section 552.103 or section 552.111 excepts attorney work product from required public disclosure under the Open Records Act, both exceptions are discretionary. *See* Gov't Code § 552.007; Open Records Decision Nos. 542 (1990) at 4, 464 (1987) at 5. Section 552.007 provides as follows:

(a) This chapter does not prohibit a governmental body or its officer for public information from voluntarily making part or all of its information available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law.

(b) *Public information* made available under Subsection (a) must be made available to any person. [Emphasis added.]

The county attorney may, therefore, choose to release to the public some or all of the requested records that may be work product.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

Ref.: ID# 33134

Enclosures: Submitted documents

cc: Mr. Jim Jones
P.O. Box 49774
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(w/o enclosures)